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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/803,396	<b>Applicant(s)</b> NONAKA, AKIRA
	<b>Examiner</b> Peter L. Ludwig	<b>Art Unit</b> 3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 March 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-18,26,31 and 33-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3-18, 26, 31, and 33-35 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### *Acknowledgements*

1. This Office Action has been given Paper No. 20070510 for reference purposes only.
2. This Office Action is correspondence to the Amendment filed on 03/08/2007.
3. Applicant has amended claims 1, 3-18, 26, 31, and 33-35.
4. Applicant has cancelled claims 2, 27, and 32.
5. Claims 1, 3-18, 26, 31, and 33-35 remain pending.

### *Response to Arguments*

6. Applicant's arguments with respect to claims 1, 26 and 31 have been considered but are moot in view of the new ground(s) of rejection. As per Applicants argument regarding the fact that Ryan does not teach an "examining means" that examines "content data," the "recording medium," the "reproducing apparatus," and the "recording apparatus" are moot in view of the cited rejection of Ryan in view of Stefik, in further view of Vogel. Regarding the arguments on page 15, paragraph 1, the arguments have been considered but, as cited above, are moot in view of the new grounds of rejection.

**Claim Rejections - 35 USC § 103**

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
2. Claims 1-18, 26-27, 31-35 are rejected under 35 U.S.C. § 103 as being unpatentable over Ryan (US 5,513,260 A), in view of Stefik (US 5,629,980 A) in further view of Vogel (U.S. Patent No. 5,446,488)

**Claims 1, 26, and 31:**

Ryan (See at least Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) discloses a means for reproducing content (cd player), a recorder and means there between for examining

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and controlling transfer (black boxes) substantially as claimed. The differences between the above and the claimed invention is the use of explicit control. It is noted that a committed content duplicator would control and examine files illicitly copied (and has done so since for at least a decade with the advent of peer to peer file sharing) and is therefore believed to be the functional equivalent of the claimed limitations. Ryan does not explicitly disclose copying digital data an optical medium. Stefik, however, in at least column 1, lines 10-24 the reproduction of optical media. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist.

Ryan does not disclose the newly-added limitation of *wherein said usage space information indicates system information of said recording apparatus and said reproducing apparatus, ownership right information of said content data, format information of said content data, and distributing profit information obtained by the distribution of said content data*. Stefik however, in at least Figure 15 as well as associated text does disclose the controlled copying of digital data in a digital rights management environment to include system in formation (items 1504, 1505, 1506), ownership rights information (items 1501-1503), format of digital data (item 1506), and profit distribution (items 1517-1525). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the cd recording system of Ryan/Hirai with Stefik's Digital Rights Management techniques because, "A fundamental issue facing the publishing and information industries as they consider electronic publishing is how to prevent the unauthorized and unaccounted

distribution or usage of electronically published materials. Electronically published materials are typically distributed in a digital form and recreated on a computer based system having the capability to recreate the materials. Audio and video recordings, software, books and multimedia works are all being electronically published. Companies in these industries receive royalties for each accounted for delivery of the materials, e.g. the sale of an audio CD at a retail outlet. Any unaccounted distribution of a work results in an unpaid royalty (e.g. copying the audio recording CD to another digital medium)" (Stefik: column 1, lines 10-24).

Regarding the amended limitations of claims 1, 26, and 31, Ryan does clearly teach an examining means for deciding whether said recording medium is of a first type having a configuration enabling recorded data to be effectively read out by performing authentication processing or of a second type having no such configuration and enabling read out of the recorded data without authentication (col. 3, line 63 – col. 4, line 11), examining means for deciding whether said reproducing apparatus is of a first type for reproducing after the authentication processing or of a second type for reproducing without that processing (col. 3, line 63 – col. 4, line 11), and examining means for deciding whether said recording apparatus is of a first type for recording after the authentication processing or of a second type for recording without that processing (col. 3, line 63 – col. 4, line 11). However, Ryan does not explicitly teach an examining means that decides whether data is to be distributed in encrypted or unencrypted form.

Stefik does teach a means for distributing data in its unencrypted state, but does not teach this in combination with the sending of data in its encrypted state (Table 2).

However, Vogel does teach an examining means to decide whether data should be transmitted in its encrypted or unencrypted state (col. 3, lines 28-48. Therefore, it would have been obvious to one of ordinary skill in the art to combine the references of Vogel and Ryan for the useful purpose of either forcing people to pay to be able to receive and decode the programs, or on the contrary, allowing anyone to view the program without payment, as taught by Vogel.

**Claim 3:**

Regarding disabling limitations of claim 3, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

**Claim 4:**

Regarding disabling limitations of claim 4, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always

exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

**Claim 5:**

Regarding the enabling limitations claim 5, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

**Claim 6:**

Regarding the enabling limitations claim 6, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

**Claim 7:**

Regarding disabling limitations of claim 7, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar

arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

**Claim 8:**

Regarding disabling limitations of claim 8, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

**Claim 9:**

Regarding the enabling limitations claim 9, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

**Claim 10:**

Regarding the enabling limitations claim 10, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

**Claim 11:**

Regarding disabling limitations of claim 11, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

**Claim 12:**

Regarding disabling limitations of claim 12, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always

exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

**Claim 13:**

Regarding the enabling limitations claim 13, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

**Claim 14:**

Regarding the enabling limitations claim 14, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

**Claim 15:**

Regarding disabling limitations of claim 15, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional

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equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

**Claim 16:**

Regarding disabling limitations of claim 16, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

**Claim 17:**

Regarding the enabling limitations claim 17, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

**Claim 18:**

Regarding the enabling limitations claim 18, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

**Claim 33:**

Regarding disabling limitations of claim 33, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

**Claim 34:**

Regarding disabling limitations of claim 34, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always

exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

**Claim 35:**

Regarding disabling limitations of claim 35, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

*Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



05/10/2007

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